Michigan Manufacturers Association℠

MMA Testimony on HB 5002
House Commerce Committee
September 27, 2011

Thank you Mr. Chair and members of the Committee. My name is Delaney Newberry and I am Director of Human Resource Policy for the Michigan Manufacturers Association. I have with me here today, Jerry Marcinkoski who heads up the Michigan Self Insurers Association and is one of the state's most well-respected and knowledgeable workers comp attorneys.

On behalf of the MMA, I am here to express our support for HB 5002. MMA represents about 2,500 members that operate in the full spectrum of manufacturing industries, ranging from small manufacturers to some of the world's largest corporations. Manufacturing continues to be the largest sector of our economy, directly employing over 500,000 Michigan residents.

The changes in HB 5002 largely fall into two primary categories: codification of current case law and modernization of the outdated statute. I think it would be helpful to have Mr. Marcinkoski give the Committee a brief history of the wild swings in judicial interpretations of the workers comp act to give some context on the impact of changes in court composition and the need to codify current case law. After that I'd like to take a few minutes to talk about the other focal point of the legislation and that is modernization of a terribly outdated Act. So as I said, Mr. Marcinkoski is a highly regarded and knowledgeable workers comp attorney and we're really grateful that he's able to be here today to speak to you because he actually argued many of very cases that we're here to talk about before the Supreme Court.

Modernization

Workers compensation has been a critical issue to MMA going back to the early days of our formation. Back in 1902 the issue of workplace injuries and workers comp was of primary importance to our association. At the time, Michigan had a tort based system – injured workers were forced to sue their employers for medical care or payment for their injuries. Very few people had the resources to take matters to court and the few that did, generally lost their cases.

So in 1910, it was the MMA that called together our state's pioneering manufacturers to develop a system of workers compensation to present to the Legislature. The bill that was presented to the legislature in 1911 went through a series of revisions and redrafts but by March 1912, Governor Chase Osborn signed into law Michigan's first workers comp law with the support of both the MMA and the Michigan Federation of Labor.

It was MMA that came to the Legislature nearly 100 years ago and asked for a statutory system to guarantee compensation for workers who were injured on the jobs. There still is a whole lot of that 100-year old language that sits in our statute today. It was put in place before we had things like medical implants or knee replacements and I know there are some folks here today that would like to talk about that issue in more detail. It still makes reference to a wife being presumptively dependent on her husband. It doesn't really contemplate the global, transient society we have today. So here we are, a century after my predecessor asked you to put a workers comp system in place, I'm asking you to modernize it and get it up-to-date with our time. To briefly go over the provisions in the bill that are necessary to modernize the statute:

As I mentioned before, the bill acknowledges advancements in medical technology by allowing medical implants to be taken into account when evaluating the use of body members. Currently, the statute does not contemplate medical implants or replacements. So despite a successful joint replacement surgery that was paid for by the employer, a loophole exists in the law that allows a person to collect weekly wage benefits even after being made whole medically. The Supreme Court urged the Legislature to amend the statute to fix this unfair loophole.

HB 5002 incorporates language that would establish reciprocity between Michigan and other states to prevent forum shopping for injury claims by professional athletes. This has been a recent and widespread phenomenon throughout the country and we need to get in-step with other states.

The current interest rate on weekly workers' compensation payments is 10% per annum. While that rate made sense at the time the interest provision was enacted, it makes no sense today. The bill revises the interest rate requirement for weekly compensation to be consistent with market conditions and with money judgments in a civil action. Linking the interest rate to a market standard, as in civil cases, keeps the applicable interest rate in step with the times.

The separate chapter in the Act addressing occupational disease is unnecessary since there are very few such claims today. HB 5002 streamlines the Act by combining Chapters 3 and 4 so that a singular clear chapter will address disability compensation. Compensation for occupational diseases will continue to be compensated under the general disability chapter.

Under Michigan's Voluntary Pay system, the employer pays all medical expenses for work injuries. The employer gets 10 days from the date of the injury to decide what provider treats the injured worker. It's in the employer's best interest to get their worker the best possible treatment and get them back to work and the current 10 day time frame simply isn't reasonable considering modern medical treatment and testing. Increasing the duration of the time the employer controls treatment immediately after the injury from 10 days to 90 days ensures prompt proper care and a quick return to work.

In almost every circumstance of American law, each party is responsible for paying their own attorney fees. However, an ambiguity in the law has resulted in an unfair interpretation that says that in the case of an adjudicated medical bill, an employer or carrier would be responsible for attorney fees on top of the medical bill. This interpretation is in contrast to other awards to the injured worker and medical providers, who must pay their own attorney fees out of recoveries received from the employer or

carrier. We must clarify the statute to address this inequitable interpretation. The prevailing party in a medical dispute case should pay their attorney. The employer or carrier should not have to pay the medical bill and the other side's attorney's fees as well.

HB 5002 deletes outdated and unconstitutional provisions of the Act that establish a conclusive dependency for a wife. This provision of the Act was declared unconstitutional decades ago, yet remains in the statute. The Supreme Court has ruled that neither a wife nor a husband shall be presumed to be dependent upon the other and that a spouse must prove factual dependence.

HB 5002 allows for coordination of benefits between individuals eligible for employer-provided pension or retirement benefits and workers comp benefits. Coordination of benefits already exists between employer-provided pension/retirement benefits and workers comp benefits. An eligible individual that chooses to postpone retirement to avoid a reduction in workers comp benefits should not be in a better financial position than a similarly positioned pensioner.

I know this is a lot of information and a very complex subject matter. MMA strongly believes that both businesses and injured workers will benefit by establishing a clearer and more efficient workers' compensation system that relies less on subjective interpretations and more on unambiguous statutory-grounded legal principles. I urge your support for HB 5002 and would be more than happy to take any questions.